IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

Crl.MC.No. 1151 of 2007()

ST.283/2006 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONERS:

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1. SAJI VARGHESE, DIRECTOR,
M/S MANGALAM HOSPITALS PVT. LTD.,
RESIDING AT MANGARAPALLY,
PANAYAKKUZHIPPU,
KOTTAYAM.

2. BIJU VARGHESE, DIRECTOR,
M/S MANGALAM HOSPITALS PVT. LTD.,
RESIDING AT MANGARAPALLY,
PANAYAKKUZHIPPU,
KOTTAYAM.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS:

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1. M/S PROMPT ENTERPRISES,
37/318, KESHAV APARTMENTS,
SUBASH CHANDRABOSE ROAD,
KADAVANTHARA, KOCHI-20,
A REGISTERED PARTNERSHIP FIRM, REP. BY
POWER OF ATTORNEY HOLDER MR.V.P RADHAKRISHNAN,
RESIDING AT NIRMALALAYAM, JEWEL NAGAR,
KADAVANTHARA, KCOHI-20.

2. STATE OF KERALA,
REPL. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1151 OF 2007

Dated this the 11th day of April, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instruments Act. The cheque is for an amount of Rs.5,000/-. It bears the date 13/4/05. The petitioner did not appear before the learned Magistrate. Consequently, a warrant of arrest is issued against the petitioner. The learned counsel for the petitioner submits that the petitioner is willing to pay or deposit the amount of Rs.5,000/- along with an amount of Rs.1,000/- towards interest and costs. The short request of the petitioner is that the personal presence of the petitioner may not be insisted. Inasmuch as a warrant of arrest is issued against the petitioner, the petitioner apprehends that his application for exemption may not be considered by the learned Magistrate. In these circumstances, the petitioner prays that appropriate

directions may be issued under Sec.482 of the Cr.P.C.

2. I am satisfied that, in the peculiar facts and circumstances of this case, appropriate directions under Sec.482 of the Cr.P.C. can be issued in favour of the petitioner.

3. This Crl.M.C. is accordingly allowed and the following directions are issued:

(i) The warrant of arrest issued against the petitioner shall not be executed till 20/4/07 i.e., the next date of posting.

(ii) On that day the petitioner shall appear before the learned Magistrate personally or through counsel and apply for exemption. If the petitioner deposits an amount of Rs.6,000/- and files a memo stating that the petitioner has no objection in the said amount being released to the complainant towards the amount of the cheque, if the complainant would withdraw from the prosecution, the learned Magistrate shall not insist on the personal presence of the petitioner and he shall be permitted to appear through counsel. Appropriate orders shall be passed in the case also.

(iii) If the complainant does not accept the offer, the trial

can be continued; but the personal presence of the petitioner shall not be insisted unless there be any compelling reasons which shall be specified by the learned Magistrate before issuing such direction.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge